

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO.6341 OF 2022

**VISHAL RAJKUMAR KOTGYALE AND OTHERS
VERSUS
THE STATE OF MAHARASHTRA THROUGH THE COLLECTOR, LATUR**

...
Advocate for Petitioners : Mr. Ram S. Shinde
AGP for Respondent – State : Mr. S.N. Morampalle
...

CORAM : NITIN B. SURYAWANSHI, J.

DATE : 03rd MAY, 2023

PER COURT :

1. Leave granted to correct name of petitioner No.4 in the cause title.
2. Petitioners are aggrieved by the order dated 22/02/2022, passed by learned Civil Judge, Junior Division, Udgir, below Exhibit-15 in Misc. Civil Application No.220/2021, thereby rejecting the application filed by petitioner No.1 and clause 4 of the operative part of order dated 09/09/2021, passed below Exhibit-1 in Civil Misc. Application No.220/2021.
3. Undisputed facts of the present case are that brother of petitioner Nos.1 and 4 and son of petitioner Nos.2 and 3, namely Akash Rajkumar Kotgyale expired on 01/03/2020 and petitioners are his legal heirs. Deceased Akash was bachelor. He was serving in M.S.E.D.C.L. as a Technician.
4. Initially, Civil Misc. Application No.217/2020 was filed by

petitioner No.3 mother of the deceased, for issuance of heirship certificate. The same was allowed. Petitioner No.1 thereafter filed Civil Misc. Application No.220/2021, by arraying petitioner Nos.2 to 4 as party respondents, seeking revocation of heirship certificate under Section 383 of the Indian Succession Act. Trial Court, after hearing the parties, passed following order below Exhibit-1:-

- "1) *Application is allowed as following.*
- 2) *Respondent no.2 i.e. Bharatibati Rajkumar Kotgyale is recognized as the class I heir of the deceased Akash Rajkumar Kotgyale as per the provisions of Hindu Succession Act, 1956.*
- 3) *Applicant i.e. Vishal Rajkumar Kotgyale, respondent no.1 i.e. Rajkumar Sidramappa Kotgyale and respondent no.3 i.e. Vikas Rajkumar Kotgyale are the class II heirs of the deceased Akash Rajkumar Kotgyale as per the provisions of Hindu Succession Act, 1956.*
- 4) *Issue Heirship Certificate in the name of respondent no.2 in the prescribed format."*

Petitioners are aggrieved by clause 4 of the said order.

5. By filing application Exhibit-15, petitioner No.1 prayed that along with the respondents, he may be declared as heir in view of order passed below Exhibit-1. This application is rejected by the Trial Court.

6. Heard learned advocate for petitioners and learned Additional Government Pleader for respondent – State. Perused the

memo of writ petition, annexures thereto and the impugned order.

7. Learned Additional Government Pleader states that appropriate orders may be passed by taking into consideration Appendix B of the Bombay Regulation Act, 1827 and the facts in the present case.

8. On perusal of Appendix B of the Bombay Regulation Act, it is clear that heirship certificate can be issued by incorporating the names of class I and class II heirs in the same certificate. It appears that Trial Court has misread and misconstrued the Appendix B of Bombay Regulation Act, and has held that heirship certificate can be issued only in favour of class-I heir. Non-application of mind on the part of Trial Court is writ large on the face of record. Impugned order, therefore, cannot be sustained.

9. In the result, writ petition is allowed. Impugned order dated 22/02/2022, passed by learned Civil Judge, Junior Division, Udgir, below Exhibit-15 in Misc. Civil Application No.220/2021, is quashed and set aside. The matter is remitted back to the Trial Court for consideration on merit afresh.

10. Trial Court shall decide the matter within two weeks from the date of receipt of writ of this order, to the extent of issuance of heirship certificate in format prescribed in Appendix A.

(NITIN B. SURYAWANSHI, J.)